

PEARSON, J.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FREDERICK BANKS,

Plaintiff,

v.

SOO SONG, *et al.*,

Defendants.

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CASE NO. 4:17CV1511

JUDGE BENITA Y. PEARSON

**MEMORANDUM OF OPINION AND  
ORDER** [Resolving [ECF No. 6](#)]

**I.**

On August 9, 2017, the Court entered an order summarily dismissing this prisoner civil rights action pursuant to the three-strikes rule set out in [28 U.S.C. § 1915\(g\)](#). [ECF No. 5](#). Pending is *Pro Se* Plaintiff Frederick Bank's Motion for Reconsideration and Motion to Vacate Order of Dismissal ([ECF No. 6](#)) under [Federal Rules of Civil Procedure 59\(e\)](#) and [60](#).

**II.**

When a *pro se* litigant files a motion for reconsideration, the district court will construe the motion as either a motion to alter, amend or vacate a judgment pursuant to [Fed. R. Civ. P. 59\(e\)](#), or a motion for relief from judgment pursuant to [Fed. R. Civ. P. 60\(b\)](#), depending on when the motion was filed. *See, e.g., Johnston v. Robert Bosch Tool Corp.*, 2008 WL 11358070, at \*1 ([W.D. Ky. Nov. 10, 2008](#)).

Because Plaintiff filed this motion within twenty-eight (28) days of the Court's entry of judgment, it is construed as a motion to alter or amend judgment under [Rule 59\(e\)](#). Such

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motions are entrusted to the discretion of the district court, [Huff v. Metro. Life Ins. Co.](#), 675 F.2d 119, 122 (6th Cir. 1982), and may only be granted when there has been: (1) a clear error of law; (2) an intervening change in controlling law; (3) newly discovered evidence; or (4) a showing of manifest injustice. [Jones v. Gobbs](#), 21 Fed.Appx. 322, 323 (6th Cir. 2001) (citing [GenCorp, Inc. v. American Int'l Underwriters](#), 178 F.3d 804, 834 (6th Cir. 1999)).

Having reviewed Plaintiff's motion ([ECF No. 6](#)), the Court finds that Plaintiff has not demonstrated any circumstance warranting relief from the Court's judgment. Nothing in the motion alters the Court's conclusion that this action was properly dismissed [pursuant to 28 U.S.C. § 1915\(g\)](#).

### III.

Accordingly, Plaintiff's Motion for Reconsideration and Motion to Vacate Order of Dismissal ([ECF No. 6](#)) is denied. The Court certifies, pursuant to [28 U.S.C. §1915\(a\)\(3\)](#), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

February 21, 2018  
Date

/s/ Benita Y. Pearson  
Benita Y. Pearson  
United States District Judge